IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1042 of 1996

in

SPECIAL CIVIL APPLICATIONNo 485 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVISIONAL CONTROLLER GSRTC

Versus

AHMEDKHAN JABBARKHAN PATHAN

Appearance:

MR MURLI DEVNANI FOR MR YOGESH S LAKHANI for Appellant No.

MS JAYSHREE C BHATT for Respondent No. 1

MR IS SUPEHIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 13/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. This Letters Patent Appeal was reached for hearing after 6 years, though, as found from the order passed by the Division Bench earlier at the time of admission of the Letters Patent Appeal on 12th November, 1997, which shows that while admitting the Letters Patent Appeal and considering the circumstances found in the present case, office was directed to notify the Letters Patent Appeal for final hearing in the 3rd week of January, 1998 and at the time of admission, Mr. Supehia, learned advocate waived service of notice on behalf of the respondent workman.

2. We have heard Mr. Devnani, learned advocate for Mr. Lakhani, learned advocate for the appellant and during hearing, he took us through the order under challenge passed by the learned Single Judge while disposing of Special Civil Application No. 485 of 1996 filed by the petitioner Corporation as well as the order passed by the Presiding Officer, Labour Court, Nadiad dated 5th July, 1995 passed in Reference (LCN) No. 257 of 1989. It is the contention of Mr. Devnani that the learned Single Judge ought not to have dismissed the petition in light of the contentions raised before him that the labour Court was not justified in awarding 50% back wages in favour of the respondent workman, in view of the fact that in an inquiry conducted against the respondent workman, it was proved and established that the respondent workman was rash and negligent while driving the bus and it is further established that it is only because of rash and negligent driving of the respondent workman, one pedestrian has lost his life and when the inquiry was conducted against the respondent workman giving full opportunity and when the order of dismissal was passed, the labour Court was not justified in entertaining the Reference and that to also, when the Labour Court has reinstated the workman by setting aside the order passed by the authority, the Labour Court ought to have passed the order of reinstatement without any back wages. He next urged that even the order passed by the Presiding Officer, Labour Court, Nadiad by reinstating the respondent workman on the same post was also not proper and liberty ought to have been granted in favour of the Corporation to reinstate the workman on any other post except the driver, as in the inquiry conducted by the Corporation, it is proved that the respondent workman was guilty for rash and negligent driving of the

vehicle. Mr. Devnani has accordingly alleged that the present Letters Patent Appeal is filed only with the scope that the Award passed by the Labour Court, which was confirmed by the learned Single Judge by dismissing the petition by confirming the Award of 50% back wages deserves to be set aside and respondent workman is not entitled for back wages and further that liberty ought to have been given to the Corporation to reinstate the workman on any other post except the driver.

3. Mr. Supehia, learned advocate for the respondent workman has vehemently urged and raised a preliminary question about the maintainability of the present Letters Patent Appeal as according to Mr. Supehia that as found from the original petition filed by the appellant Corporation, it suggest that the appellant corporation has while challenging the order of the Presiding Officer, Labour Court, Nadiad, preferred Special Civil Application No. 485 of 1996 under Article 227 of the Constitution of India and it is this petition, was dismissed by the learned Single Judge by using his jurisdiction under Article 227 of the Constitution of India and therefore, the present Letters Patent Appeal is not maintainable. In support of his contention, he placed reliance upon the decision of this court in the matter of ISHWARBHAI NAROTTAMBHAI PATEL VS. K.H. TRIVEDI & OTHERS, reported in 2003 (3) GLR p.1878., wherein, the Court has considering the scope of Letters Patent Appeal, had in term in para 12 has observed, which reads as under:-

"para 12. Accordingly, the following principles would have to be applied while considering the question about maintainability of a Letters Patent Appeal against the judgement of a single Judge in a petition under Art. 226 and/or Art. 227 of the Constitution :-

(i) Whether the petitioner has invoked jurisdiction of this Court under Art. 226 or Art. 227, if the learned single Judge has exercised jurisdiction under Art. 226, Letters Patent Appeal would be maintainable.

(ii) If the judgement rendered by the learned Single Judge is in exercise of jurisdiction under Art. 227 of the Constitution, Letters Patent Appeal would not be maintainable. ....."

In light of above decision, it is the contention

of Mr. Supehia that the Reference was adjudicated by the Presiding Officer of the Labour Court while disposing of Reference being Reference (LCN) No. 257 of 1989 and as per judgement and award dated 5th July, 1995, the Reference was partly allowed and workman was ordered to be reinstated in service by granting 50% of the back wages with continuation of past service and further that the Award passed by the Tribunal was order to be implemented within 30 days from the date of publication of the said Award in official Gazette.

4. When that order is challenged before the High Court, the title of the Special Civil Application also shows that Award of the learned Presiding Officer was challenged by the Corporation under Article 227 of the Constitution of India as well as under Section 33 of the Industrial Disputes Act, 1947. The learned Single Judge has while dealing with the said petition, has considered that the accident, which has occurred on 27.10.1986, was occurred because of rash and negligent driving of the respondent workman. A criminal complaint was filed and said criminal case being Criminal Case No. 3553 of 1986 was terminated by the learned Magistrate on appreciating the evidence led before him and learned Magistrate has acquitted the respondent workman on the charge of rash and negligent driving of the vehicle by holding that the prosecution has failed to prove the case beyond reasonable doubt. It is further found that the learned Single Judge has also in term considered that during the pendency of the said criminal case against the respondent workman, a report was submitted by the officer of the Corporation in respect of the accident and on the basis of the report, an inquiry was conducted against the respondent workman and in the said inquiry, the Inquiry Officer has found that driver of the bus was rash and negligent and on recording such finding about the negligence, the Competent Authority has dismissed the service of the respondent workman as per order dated 22nd March, 1988. As found from the order of the Labour Court that Reference was adjudicated and in the said Reference, on considering the contentions raised by the parties, the Presiding Officer has in term, considered that the respondent workman was acquitted by the Competent Authority and further that the report submitted by the Officer of the Corporation in respect of the accident, for which, the inquiry was held, the person, who has submitted report, was not the eye-witness to the incident and further that a criminal Court has on considering the evidence led before him, has found that the prosecution has failed to establish the case against the accused and thereby, acquitted the accused from the charges. The

learned Single Judge has also examined the contentions raised before him by the Corporation that whether the labour Court was, while passing the order of reinstatement on the same post, liberty was required to be given in favour of the Corporation to reinstate the workman on any other post then the driver. As found from the observation made by the learned Single Judge, the learned Single Judge has in term observed that the respondent workman had served as a driver with the Corporation since 17 years and as found from the service record, only one accident, which has occurred and thereto, was not a fetal accident and accordingly, the learned Single Judge has in term held that the reinstatement order passed by the Presiding Officer on the same post does not require any interference and accordingly, reasons given by Presiding Officer, Labour Court, Nadiad was confirmed and petition was dismissed.

5. With regard to wages granted by the labour Court, learned Single Judge has observed in the order that in view of the challenge made and contentions raised before him, no interference was required in the order under challenge and accordingly, that order of reinstatement with 50% back wages passed by the Presiding Officer, Labour Court, Nadiad was confirmed.

6. Mr. Devnani, learned advocate for the appellant is not in a position to urge before this court in view of the fact that when the petition was filed, challenging the order of the Presiding Officer of the Labor Court under Article 227 of the Constitution of India, as per decision of this court, referred hereinabove, Letters Patent Appeal is not required to be entertained or it is maintainable.

7. Considering the submission of Mr. Devnani that learned Single Judge ought to have entertained the Special Civil Application by modifying the Award of the Presiding Officer of the Labour Court in respect back wages awarded by him, in view of the fact that respondent workman was ordered to reinstate in service by granting 50% back wages. As found from the observation made by the Presiding Officer of the Labour Court and as found in the discussion made in his Award in para 6, the learned Judge has in term observed that from the date of termination of the order passed by the Competent Authority, the respondent workman was not gainfully employed and the Presiding Officer has set aside the order of dismissal. The Presiding Officer has also observed that it would be in the interest of justice to award 50% back wages in favour of the workman.

8. In light of the finding recorded by Presiding Officer of the Labour Court, Nadiad and the same was confirmed by learned Single Judge of this Court, we do not think that this is a matter, where this court is require to entertain the present Letters Patent Appeal. Hence, Letters Patent Appeal is accordingly dismissed. The Corporation has to pay costs to the respondent workman. In view of the order passed in Letters Patent Appeal No. 1042 of 1996, any order of stay, is ordered to be vacated forthwith and appellant Corporation is directed to pay the arrears of the amount immediately within 4 weeks from today.

(D.K. Trivedi, J.)

(Sharad D. Dave, J.)
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